

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

ALL PARTS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

: Master File No. 12-md-02311
: Honorable Marianne O. Battani
:
:
:
:
:
:
:
:
:
:

**RESPONDING DEFENDANTS' RESPONSE TO END-PAYOR
PLAINTIFFS' OBJECTIONS TO MASTER'S ORDER REGARDING
MOTION TO MODIFY STIPULATED ORDER OF DISCOVERY**

The undersigned Defendants respectfully request the Court overrule the objections by end-payor plaintiffs ("EPPs") to the Master's October 8, 2014 Order (the "Order" or "Master's Order") on EPPs' motion to modify the Stipulated Order of Discovery of December 23, 2013 (Dkt. 664) (the "DOJ Discovery Stay" or "the Stay"), as modified by the Court's Order of June 25, 2014 (Dkt. 750). The Master's Order granted EPPs' request to serve an interrogatory upon defendants seeking identification of the makes and models for the motor vehicles whose parts were included in guilty pleas negotiated with the DOJ, but sensibly limited the relief to cases "where discovery is underway," and further ruled that "Defendants

retain whatever rights they may have to object to the requested discovery in their particular cases.” Dkt. 835.

The EPPs seek to drastically expand the Order by requiring *all* defendants that have pleaded guilty or agreed to plead guilty in the context of a DOJ investigation to “substantively respond” to the interrogatory. Dkt. 837 at 1-2. Thus, while styled as a request to “modify” the DOJ Discovery Stay, the EPPs’ proposed order goes much further: It seeks to accelerate discovery in all “cases that are presently or become part” of this MDL, to strip defendants of their right to object to such discovery, and to deprive many defendants of the benefit of negotiated agreements with EPPs to stay proceedings pending filing of amended complaints. Dkt. 837-2 at 1. EPPs’ proposed modification to the Master’s Order should be overruled for the following reasons:

First, the Master’s ruling is consistent with the existing DOJ Discovery Stay adopted by the Court. The Stay requires that any discovery “be conducted in accordance with the case management order and discovery schedule *applicable to the particular case*.” Dkt. 664 at 5 (emphasis added). Moreover, it “does not foreclose any party from objecting on any grounds available to it under the Federal Rules of Civil Procedure . . . or supersede any other stay of or limitation on discovery that may be imposed in any existing or subsequent case

management order or discovery schedule” *Id.*¹ EPPs’ proposed order, in contrast, would not only authorize EPPs to prematurely serve their proposed interrogatory in cases in which a discovery schedule has neither been negotiated among the parties nor entered by the Court, but also preclude defendants from interposing any valid objections in response.

Second, the Master’s Order recognizes that the various product cases in this MDL are differently situated, by design of the parties and the Court and by virtue of the nature of EPPs’ allegations. Motions to dismiss have not yet been briefed, let alone decided, in many cases. In others, proceedings are effectively stayed by agreement of the parties (including EPPs) pending the filing of amended complaints.² And within particular cases, not all defendants are in the same

¹ The undersigned defendants also opposed EPPs’ original motion to modify the DOJ Discovery Stay “[t]o the extent that the [EPPs] . . . seek a blanket order authorizing service of the proposed interrogatory in all product cases and requiring Defendants in all product cases to respond to the proposed interrogatory” and “reserve[d] – as the DOJ Discovery Stay already contemplates – any other objections that may be available to them in their respective cases . . . as well as objections addressed to the specific substance of the [EPPs’] request.” Dkt. 804 at 1-2.

² Defendants in many actions waived service or agreed to accept service in exchange for EPPs agreeing to stay the proceedings pending the filing of an amended consolidated complaint. *See, e.g.,* Stipulation and Order Regarding Accepting Service of Complaints and Extension of Time, *Barron v. Koito Mfg. Co., Ltd.*, No. 2:13-cv-12483-MOB-MKM (E.D. Mich. Nov. 21, 2013), ECF No. 7; Stipulation and Order Regarding Accepting Service of Complaints and Extension of Time, *Adams v. Diamond Electric Mfg. Co.*

position: some have not been properly served, and some might have legitimate jurisdictional defenses that have not yet been addressed through a motion to dismiss. EPPs' proposal for across-the-board discovery is thus unworkable as a procedural matter. EPPs—who have unquestionably benefitted from stipulated delays in later-filed cases—should not be permitted to prematurely demand discovery in cases where motions to dismiss have not yet been resolved solely because of EPPs' unfounded prediction that such motions, even those that have yet to be filed, will be unsuccessful. *See* Dkt. 837 at 3.

Third, the Master's ruling is consistent with the Court's management of the MDL to date. During his September 16, 2014 conference with the parties, the Master explained his understanding of the Court's preference that discovery in later-filed cases begin after the motion to dismiss phase. Moreover, the Court has previously recognized how differently the cases and defendants are postured—not just procedurally, but factually. At the most recent status conference held on October 8, 2014, the Court emphasized that neither EPPs nor any other plaintiff groups in this MDL have alleged a single, overarching conspiracy across auto parts and suppliers. *See* Hr. Tr. at 28, 80.³ The Court therefore ordered the parties only

Ltd., No. 2:13-cv-14173-MOB-MKM (E.D. Mich. Nov. 13, 2013), ECF No. 7.

³ Many defendants in later-filed cases are named only in one or two product cases. By way of example, Diamond Electric Mfg. Co., Ltd. and its U.S.

in the *Wire Harness* cases, which are most advanced, to proceed with a deposition protocol and class certification schedule. EPPs fail to explain how serving their proposed interrogatory *now* in all MDL cases will aid the Court and parties in coordinating discovery and class certification, which are already moving forward in earlier-filed cases. Nothing in the Master’s Order forecloses EPPs from serving the proposed interrogatory in later-filed cases at the appropriate juncture.

Finally, the Court should adopt the Master’s ruling that “all Defendants retain whatever rights they may have to object to the requested discovery in their particular cases.” Dkt. 835. EPPs’ request that the Court order defendants to “substantively respond” to their proposed interrogatory seeks to preclude defendants from asserting objections—an unreasonable and prejudicial shortcut of the usual discovery process. Indeed, whether or not the Court concludes that now is the appropriate time for EPPs to serve their interrogatory on all defendants in all cases, EPPs have made no showing that defendants should be unilaterally deprived of their rights under the Federal Rules of Civil Procedure to assert objections based on timing, form, substance, or other particularized grounds, as with all other discovery. Defendants have a fundamental right to object to

subsidiary are defendants solely in *Ignition Coils*, where EPPs have yet to file an amended consolidated complaint. *See In re Ignition Coils*, No. 2:13-cv-01403 (E.D. Mich.); *Adams v. Diamond Electric Mfg. Co., Ltd.*, No. 2:13-cv-14173-MOB-MKM (E.D. Mich.).

discovery, and EPPs cannot steamroll that right with vague and unfounded assertions of delay and inefficient case management.

Wherefore, the undersigned defendants respectfully request that this Court overrule EPPs' objections to, and adopt, the Master's Order of October 8, 2014.

Dated: October 27, 2014

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

/s/ Matthew J. Reilly

Matthew J. Reilly

Abram J. Ellis

David T. Shogren

1155 F Street, N.W.

Washington, DC 20004

Telephone: (202) 636-5500

Facsimile: (202) 636-5502

matt.reilly@stblaw.com

aellis@stblaw.com

dshogren@stblaw.com

George S. Wang

Shannon K. McGovern

425 Lexington Avenue

New York, NY 10017

Telephone: (212) 455-2000

Facsimile: (212) 455-2502

gwang@stblaw.com

smcgovern@stblaw.com

Attorneys for Defendants Stanley Electric Co., Ltd.; Stanley Electric U.S. Co., Inc.; and II Stanley Co., Inc.

SIMPSON THACHER & BARTLETT LLP

/s/ Matthew J. Reilly

Matthew J. Reilly

Abram J. Ellis

David T. Shogren

1155 F Street, N.W.

Washington, DC 20004

Telephone: (202) 636-5500

Facsimile: (202) 636-5502

matt.reilly@stblaw.com

aellis@stblaw.com

dshogren@stblaw.com

George S. Wang

Shannon K. McGovern

425 Lexington Avenue

New York, NY 10017

Telephone: (212) 455-2000

Facsimile: (212) 455-2502

gwang@stblaw.com

smcgovern@stblaw.com

*Attorneys for Defendants Diamond Electric
Mfg. Co., Ltd. and Diamond Electric Mfg.
Corp.*

/s/ Heather L. Kafele (with consent)

Heather L. Kafele

Keith R. Palfin

Alison R. Welcher

SHEARMAN & STERLING LLP

801 Pennsylvania Ave., NW, Suite 900

Washington, DC 20004

(202) 508-8097

(202) 508-8100 (facsimile)

heather.kafele@shearman.com

keith.palfin@shearman.com

alison.welcher@shearman.com

Brian M. Akkashian

PAESANO AKKASHIAN, PC

132 N. Old Woodward Avenue

Birmingham, MI 48009

(248) 792-6886

bakkashian@paesanoakkashian.com

*Attorneys for JTEKT Corporation, JTEKT
North America Corporation, and JTEKT
Automotive North America, Inc.*

/s/ Howard B. Iwrey (with consent)

Howard B. Iwrey (P39635)

Brian M. Moore (P58584)

DYKEMA GOSSETT PLLC

39577 Woodward Ave., Suite 300

Bloomfield Hills, MI 48304

Tel: (248) 203-0700

Fax: (248) 203-0763

hiwrey@dykema.com

bmoore@dykema.com

Franklin R. Liss

Barbara H. Wootton

Danielle M. Garten

ARNOLD & PORTER LLP

555 Twelfth Street NW

Washington, DC 20004

Tel: (202) 942-5969

Fax: (202) 942-5999

frank.liss@aporter.com

barbara.wootton@aporter.com

danielle.garten@aporter.com

Counsel for Defendants Koito

*Manufacturing Co., Ltd and North American
Lighting, Inc.*

/s/ Brian Byrne (with consent)

Brian Byrne

Ryan M. Davis

Cleary Gottlieb Steen & Hamilton LLP

2000 Pennsylvania Avenue, NW

Suite 9000

Washington, DC 20006

Tel: 202-974-1850

Fax: 202-974-1999

bbyrne@cgsh.com

Howard B. Iwrey (P39635)

Brian M. Moore (P58584)

DYKEMA GOSSETT PLLC

39577 Woodward Ave., Suite 300

Bloomfield Hills, MI 48304

Tel: (248) 203-0700

Fax: (248) 203-0763

hiwrey@dykema.com

bmoore@dykema.com

Counsel for Defendants Valeo S.A., Valeo Inc., Valeo Electrical Systems, Inc., and Valeo Climate Control Corp.

/s/ William R. Jansen (with consent)

William R. Jansen (P36688)

Michael G. Brady (P57331)

WARNER NORCROSS & JUDD LLP

2000 Town Center, Suite 2700

Southfield, MI 48075

Telephone: (248) 784-5000

Facsimile: (248) 784-5005

wjansen@wnj.com

mbrady@wnj.com

Attorneys for Defendants Robert Bosch GmbH, Bosch Electrical Drives Co., Ltd., and Robert Bosch LLC

/s/ Howard B. Iwrey (with consent)

James P. Feeney (P13335)

Howard B. Iwrey (P39635)

Benjamin W. Jeffers (P57161)

DYKEMA GOSSETT PLLC

39577 Woodward Avenue, Suite 300

Bloomfield Hills, MI 48304

Tel: 248 203-0526

Fax: 248-203-0763

jfeeney@dykema.com

hiwrey@dykema.com

bjeffers@dykema.com

dcouncil@dykema.com

*Counsel for Defendants TRW Automotive
Holdings Corp. and TRW Deutschland
Holding GmbH*

/s/ Craig P. Seebald (with consent)

Craig P. Seebald

Alden L. Atkins

Lindsey R. Vaala

VINSON & ELKINS LLP

2200 Pennsylvania Avenue, N.W.

Suite 500 West

Washington, DC 20037

Telephone: (202) 639-6585

Facsimile: (202) 879-8995

cseebald@velaw.com

aatkins@velaw.com

lvaala@velaw.com

*Counsel for Hitachi Automotive Systems,
Ltd., Hitachi Automotive Systems Americas,
Inc., and Hitachi, Ltd.*

/s/ Debra H. Dermody (with consent)

Debra H. Dermody

Michelle A. Mantine

REED SMITH LLP

225 Fifth Avenue

Pittsburgh, PA 15222

Telephone: (412) 288-3302/4268

Fax: (412) 288-3063

Email: ddermody@reedsmith.com

mmantine@reedsmith.com

Howard B. Iwrey (P39635)

Brian M. Moore (P58584)

DYKEMA GOSSETT PLLC

39577 Woodward Avenue

Bloomfield Hills, Michigan 48304

Telephone: (248) 203-0526

Fax: (248) 203-0763

Email: hiwrey@dykema.com

bmoore@dykema.com

Counsel for Defendant SKF USA Inc.

/s/ James L. Cooper (with consent)

James L. Cooper
Danielle Garten
Adam Pergament
Arnold & Porter LLP
555 Twelfth Street NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Email: James.Cooper@aporter.com
Email: Danielle.Garten@aporter.com
Email: Adam.Pergament@aporter.com

Joanne Geha Swanson (P33594)
Fred K. Herrmann (P49519)
Kerr, Russell and Weber, PLC
500 Woodward Avenue
Suite 2500
Detroit, MI 48226
Telephone: (313) 961-0200
Email: jswanson@kerr-russell.com
Email: fherrmann@kerr-russell.com

*Counsel for Yamashita Rubber Co., Ltd. and
YUSA Corporation*

/s/ Steven A. Reiss (with consent)
Steven A. Reiss
Adam C. Hemlock
Kajetan Rozga
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119
Tel.: (212) 310-8000
Fax: (212) 310-8007
steven.reiss@weil.com
adam.hemlock@weil.com
kajetan.rozga@weil.com

Frederick R. Juckniess
Schiff Hardin LLP
350 South Main Street, Suite 210
Ann Arbor, MI 48104
Tel.: (734) 222-1504
fjuckniess@schiffhardin.com

*Counsel for Bridgestone Corporation and
Bridgestone APM Company*

/s/ George A. Nicoud III (with consent)
George A. Nicoud III (SBN 160111)
tnicoud@gibsondunn.com
Austin Schwing (SBN 211696)
aschwing@gibsondunn.com
Stuart McPhail (SBN 287048)
smcphail@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Telephone: (415) 393-8200
Facsimile: (415) 393-8306

*Counsel for Defendants American Mitsuba
Corporation and Mitsuba Corporation*

/s/ Jeremy J. Calsyn (w/ consent)

Jeremy J. Calsyn
Teale Toweill
CLEARY GOTTLIEB STEEN &
HAMILTON LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 974-1522
jcalsyn@cgsh.com

David A. Ettinger
HONIGMAN, MILLER, SCHWARTZ
AND COHN LLP
660 Woodward Avenue
Suite 2290
Detroit, MI 48226-3506
(313) 465-7368
dettinger@honigman.com

*Attorneys for Defendants NSK Ltd. and NSK
Americas, Inc.*

/s/ David C. Giardina (with consent)

David C. Giardina
Courtney A. Rosen
Sidley Austin LLP
One S. Dearborn St.
Chicago, IL 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
Email: dgiardina@sidley.com
Email: crosen@sidley.com

*Counsel for Toyo Tire & Rubber Co., Ltd.,
Toyo Automotive Parts (USA), Inc., Toyo
Tire North America OE Sales LLC, and
Toyo Tire North America Manufacturing,
Inc.*

/s/ Robert J. Wierenga (with consent)

Robert J. Wierenga (P59785)

Suzanne L. Wahl (P71364)

Schiff Hardin LLP

340 S. Main Street, Suite 210

Ann Arbor, MI 48104

734-222-1500

Fax: (734) 222-1501

rwierenga@schiffhardin.com

swahl@schiffhardin.com

David M. Zinn

John E. Schmidtlein

Samuel Bryant Davidoff

Williams & Connolly LLP

725 Twelfth Street, N.W.

Washington, DC 20005

202-434-5000

Fax: 202-434-5029

dzinn@wc.com

jschmidtlein@wc.com

sdavidoff@wc.com

*Counsel for Defendants Takata Corporation
and TK Holdings Inc.*

/s/ Terrence J. Truax (with consent)

Terrence J. Truax
Charles B. Sklarsky
Michael T. Brody
Gabriel A. Fuentes
Daniel T. Fenske
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
ttruax@jenner.com
csklarsky@jenner.com
mbrody@jenner.com
gfuentes@jenner.com
dfenske@jenner.com

Gary K. August
ZAUSMER, KAUFMAN, AUGUST &
CALDWELL, P.C.
31700 Middlebelt Road
Suite 150
Farmington Hills, Michigan 48334-2374
Telephone (248) 851-4111
gaugust@zkac.com

*Counsel for Mitsubishi Electric
Corporation, Mitsubishi Electric US
Holdings, Inc., and Mitsubishi Electric
Automotive America, Inc.*

/s/ Corey W. Roush (with consent)

Corey W. Roush
William L. Monts, III
Meghan C. Edwards-Ford
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
Tel: 202.637.5600
Fax: 202.637.5910
Email: corey.roush@hoganlovells.com
william.monts@hoganlovells.com
meghan.edwards-ford@
hoganlovells.com

*Counsel for Mitsubishi Heavy Industries
America, Inc. and Mitsubishi Heavy
Industries Climate Control, Inc.*

/s/ David F. DuMouchel (w/consent)

David F. DuMouchel (P25658)
George B. Donnini (P66793)
BUTZEL LONG
150 West Jefferson, Suite 100
Detroit, MI 48226
Telephone: (313) 225-7000
dumouchd@butzel.com
donnini@butzel.com

W. Todd Miller
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Telephone: (202)663-7820
TMiller@bakerandmiller.com

*Attorneys for Defendants Tokai Rika Co.,
Ltd. and TRAM, Inc.*

CERTIFICATE OF SERVICE

I, Matthew J. Reilly, hereby certify that on October 27, 2014, I electronically filed the foregoing Responding Defendants' Response to End-Payor Plaintiffs' Objections to Master's Order Regarding Motion to Modify Stipulated Order of Discovery with the Clerk of the Court using the ECF system, which will send electronic notification to all counsel of record.

Dated: October 27, 2014

/s/ Matthew J. Reilly

Matthew J. Reilly

SIMPSON THACHER & BARTLETT LLP

1155 F Street, N.W.

Washington, DC 20004

Telephone: (202) 636-5500

Facsimile: (202) 636-5502

matt.reilly@stblaw.com